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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/747,923

12/29/2003

Jeffrey Dean Lindsay

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/747,923	Applicant(s) LINDSAY ET AL.	
	Examiner MELANIE J. HAND	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-16 and 20-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,7-16 and 20-51 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 3,4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on September 22, 2009, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

Response to Arguments

2. Applicant's arguments, see Appeal Brief, filed September 22, 2009, with respect to the rejections of claims 3-5, 7-16 and 20-51 under 35 U.S.C. 103 have been fully considered and are persuasive. The rejections of claims 3-51 under 35 U.S.C. 103 have been withdrawn.

3. Applicant's arguments, see Appeal Brief, filed September 22, 2009, with respect to the rejections of claim 1 under 35 U.S.C. 102 have been fully considered and are persuasive.

Therefore, the rejections have been withdrawn. However, upon further consideration, a new

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ground(s) of rejection is made in view of a different interpretation of the Kacher reference. Specifically the new ground of rejection is under 35 U.S.C. 102/35 U.S.C. 103 to address the limitation “nanofabricated attachment means”, which constitutes product-by-process claim language and is a limitation that is not explicitly disclosed by Kacher, hence the withdrawal of the rejections under 35 U.S.C. 102 (a) and 35 U.S.C. 102 (e).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claim 1 is rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kacher et al (U.S. Patent Application Publication No. 2003/0044569).

With respect to **claim 1**: Kacher discloses a disposable absorbent article in the form of a cleaning sheet having a nonwoven substrate made of natural cellulosic material, i.e. absorbent material (¶0046), comprising a nanofabricated attachment means comprising adhesive hairs in the form of slanted fiber protrusions having adhesive coated thereon (¶¶0054,0116) disposed on a flexible substrate wherein said hairs are effective to adhesively engage an opposing surface comprising a polymeric film or a fibrous web such as carpet, wherein the attachment means has a packing density of about 1 to about 1,000 per square centimeter (¶0063), i.e. 100 - 10⁵ hairs per square millimeter, which overlaps the claimed range of at least 500 hairs per square millimeter, wherein the hairs do not consist of a spatula or protrusion positioned at a terminal end of the hairs as can be seen in Fig. 8.

With regard to the limitation “nanofabricated” recited in association with the attachment means, such limitation constitutes product-by-process claim language that is given little patentable weight in an article claim. An article as disclosed by Kacher having nanofabricated attachment elements would be structurally and functionally identical to an article in which the elements are fabricated by other processes. Alternatively, it would be obvious to one of ordinary skill in the art to modify the article of Kacher such that the attachment means are nanofabricated with a reasonable expectation of success. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). *See also MPEP* § 2113. The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983)

Allowable Subject Matter

6. Claims 5, 7-16 and 20-51 are allowed.
7. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowance

8. The following is an examiner’s statement of reasons for allowance: Applicant’s arguments regarding the rejection of claim 5 under 35 U.S.C. 103 were sufficient to overcome the remaining outstanding rejections of claims 5, 7-16 and 20-51 over the closest prior art of

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record. Specifically, since Kacher does not disclose a diameter for the hairs within the claimed range, i.e. the diameter is larger than the values in the claimed range, though Geim discloses hairs having a diameter within the claimed range, there is no motivation for one of ordinary skill in the art to make the hairs of Kacher smaller so as to have the diameter disclosed by Geim because a smaller attachment element yields a smaller attachment/engagement area, which limits the ability of the element to engage its complementary element to fasten the article. Claims 7-16 and 20-51 depend directly or ultimately from claim 5 and are therefore also allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Reasons for Indicating Allowable Subject Matter

9. The following is a statement of reasons for the indication of allowable subject matter:

a. With respect to claim 3, Kacher does not disclose a diameter for the hairs within the claimed range, i.e. the diameter is larger than the values in the claimed range.

Though Geim, the secondary reference, discloses hairs having a diameter within the claimed range, there is no motivation for one of ordinary skill in the art to make the hairs of Kacher smaller so as to have the diameter disclosed by Geim because a smaller attachment element yields a smaller attachment/engagement area, which limits the ability of the element to engage its complementary element to fasten the article.

b. With respect to claim 4, Kacher does not disclose any adhesive force per hair. Therefore, one of ordinary skill in the art would not be motivated to pick an adhesive

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force per hair within the claimed range for any reason other than that disclosed by applicant. As hindsight is not a valid basis for motivation, Kacher, the closest prior art of record, neither discloses nor suggests an adhesive force per hair as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

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